

JUST 5 MINUTES

TAXCONTM INDIA PRIVATE LIMITED

INCOME TAX ACT

1. *Royalty rate under Spain DTAA Notified*

India has notified the tax rates on royalties and fees for technical services (FTS) under the India-Spain double taxation avoidance agreement (DTAA) at up to 10%, lower than specified in its domestic law. As per the notification, royalties and fees for technical services may also be taxed in the contracting state in which they arise, according to the law of that state. Tax rate under the domestic law can go up to 20%, as per a provision that is effective from the assessment year 2024-25.

INCOME TAX ACT

2. *IT Dept expands scope for filing appeals by tax officers, includes TDS Disputes*

The CBDT has permitted income tax authorities to file appeals irrespective of monetary threshold in cases relating to TDS/TCS, undisclosed foreign income, or information received from investigating agencies like ED and GST Intelligence. Currently, tax authorities can file appeals before the ITAT, High Court and Supreme Court, if the disputed tax demand exceeds Rs 50 lakh, Rs 1 crore and Rs 2 crore respectively – a threshold fixed in 2019. The Central Board of Direct Taxes (CBDT) in a circular clarified that the said monetary limits will not be applicable for filing appeals in cases where prosecution has been filed by the department in the relevant case, and trial is pending and conviction order has been passed and the same has not been compounded.

INCOME TAX ACT

3. *Changes in Form 3CD with reg. to MSME Payments*

The CBDT has notified changes to the Form 3CD which includes disclosure of section 43B(h) disallowance under clause 26. However, Clause 22, pertaining to interest restrictions under the MSME Development Act, was not amended. Now, said clause is amended to include disclosure of the amount disallowed under section 43B(h) of the Act.

4. *Regarding filing ITR by successor company*

The CBDT has allowed successor companies to file modified ITRs in cases where the order of business reorganization of the competent authority was issued after June 01, 2016, but before April 01, 2022. The deadline to file modified ITR is June 30, 2024.

COMPANIES ACT

1. *Deployment of CRF on MCA Portal*

MCA has provided for deployment and usage of the 'Change Request Form' (CRF) on MCA-21. This web-based Form is to be used only under exceptional circumstances, for making a request to ROC, for purposes which cannot be catered through any existing form or services or functionality available either at Front Office level (users of MCA-21 services) or Back Office level (RoCs).

Further, this Form primarily is intended to be used for purposes like Master Data correction and to comply with certain directions of Courts/Tribunals, which ordinarily cannot be complied with through existing functionality of forms or services on the MCA-21 system.

CASE LAWS - INCOME TAX

1. *CIT(IT) v. Bio-Rad Laboratories (Singapore) Pte. Ltd.*

It has been held that information technology and other administrative services provided by assessee, a US based company, to its affiliate in India were not FTS under provisions of India-USA DTAA

2. *Swachh Vapi Mission Trust v. CIT (Exemption)*

It has been held that where assessee-trust filed application in Form No. 10AB for approval under section 80G(5)(iii) on Dec 02, 2022 and Commissioner (Exemption) having noted that assessee had not filed application on or before Sept 30, 2022 as per as per CBDT circular No.8/2022 rejected application as not maintainable and since Tribunal had power to condone delay, hence, delay was to be condoned and matter was to be remitted to Commissioner (Exemption) to decide application afresh on merits.

CASE LAWS - INCOME TAX

3. *Principal CIT v. Woodward India (P.) Ltd.*

It has been held by Hon'ble High court that where upward adjustments in respect of royalty and fee for technical services were deleted by DRP and in subsequent years also said adjustments were deleted by DRP , bearing in mind consistent approach, there was no justification to interfere with order of Tribunal deleting said adjustment.

4. *ACIT (Exemption) & Anr. v. Padmavati Institute for Medical Education & Science Trust*

It has been held that donation received by the assessee's trust from its founder member for the purpose of construction / running of hospital / dispensary and clinic is a corpus donation. There is no violation of section 11(1)(d) for the reason that the assessee has utilized this donation for repayment of bank loan which was taken for purchasing the land for said purpose and therefore exemption u/s 11(1)(d) is allowed.

CASE LAWS - INCOME TAX

5. *Konti Infrapower & Multiventures (P.) Ltd. v. Income-tax Officer - [2024]*

It has been held that where assessee filed return within extended due date under section 139(1) opting provisions of section 115BAA and filed Form No. 10-IC before time prescribed in Circular No. 19/2023, dated Oct 23, 2023, however, these details of filling of Form No. 10-IC and CBDT Circular were not available at time of processing of return of income under section 143(1) with Assessing Officer, issue was to be restored to Assessing Officer to examine and consider applicability of provisions under section 115BAA opted by assessee.

6. *Abdul Rahim Suleman Ghaswala Vs. DCIT, 01/01/2024*

It has been held that assessee cannot be denied the benefit of exemption u/s 54F on the ground that he is also jointly owning 16.67% rights in six flats since joint ownership / part ownership cannot be treated as absolute ownership in the absence of any specific words to that effect in section 54F of the Act.

CASE LAWS - INDIRECT TAX

1. *Madras HC on Residential v. Commercial use of property*

Madras high court, while pointing out that rentals attract GST only if the rented building is used for commercial purposes, has quashed GST demand on hostels for working women and girls. It was further held that while adverting to the imposition of GST on hostel accommodation, it has to be looked into as to whether the inmates of the hostel rooms are using the premises as their residential dwelling or commercial purpose since renting of residential unit attracts GST only when it is rented for commercial purpose. Since the end-use of the property is for residential purposes, it would not attract GST.

It was further held that the issue of levy of GST on residential accommodation should be viewed from the perspective of the recipient of service and not from the perspective of service provider, who offers the premises on rental basis.

CASE LAWS - INDIRECT TAX

2. *Supreme Court on intermediary services*

The Supreme Court has recently rejected an appeal arising out of the Customs Excise and Service Tax Appellate Tribunal (CESTAT), where the CESTAT had concluded that the provision of incidental services, such as the selection of vendors or making of goods by those vendors ancillary to the main supply or procurement of goods conducted on a principal-to-principal basis, does not qualify as an intermediary service.

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